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Kiewit Infrastructure West Co. and Mass Electric Construction Co.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MIKE MARQUEZ, an individual

Case No. CIV14-00287 ABC (JEMx)

Removed From State Court
Case No: BC528636

Plaintiff,
vs.

KIEWIT INFRASTRUCTURE WEST
CO., a Delaware corporation; MASS
ELECTRIC CONSTRUCTION CO., a
Delaware corporation; and, DOES 1
through 50, Inclusive.

**[PROPOSED] ORDER RE:
CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

Complaint Filed: November 22, 2013
Trial Date: None

The Court, having reviewed and considered the parties Stipulated Confidentiality Agreement and Protective Order entered into between Plaintiff Mike Marquez and Defendant Kiewit Infrastructure West Co. and Mass Electric Construction Co., GRANTS the protective order. A copy of the Stipulated Confidentiality Agreement and Protective Order is attached to this order as Exhibit A.

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: March 20, 2014

ATION, IT IS SO ORDERED: 

United States District/Magistrate Judge

[PROPOSED] ORDER RE: STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

EXHIBIT "A"

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UNITED STATES DISTRICT COURT
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11 MIKE MARQUEZ, an individual
12 Plaintiff,
13 vs.
14 KIEWIT INFRASTRUCTURE WEST
15 CO., a Delaware corporation; MASS
16 ELECTRIC CONSTRUCTION CO., a
17 Delaware corporation; and, DOES 1
through 50, Inclusive,
Defendants.

Case No. CIV14-00287 ABC (JEMx)
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**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

Complaint Filed: November 22, 2013
Trial Date: None

19 This proposed Stipulated Protective Order and Confidentiality Agreement
20 ("Protective Order") concerns the treatment of confidential information in the
21 above captioned action and is entered into between Plaintiff Mike Marquez
22 ("Plaintiff"), and Defendants Kiewit Infrastructure West Co. and Mass Electric
23 Construction Co. ("Defendants") (collectively, the "Parties"), by and through
24 their counsel of record, as follows:

25 WHEREAS disclosure and discovery in this action are likely to involve
26 production of confidential, proprietary, or private information for which special
27 protection from public disclosure and from use for any purpose other than
28 prosecuting this litigation may be warranted. Accordingly, the Parties hereby

1 stipulate to and petition the Court to enter the following Stipulated Protective
2 Order. The Parties acknowledge that this Order does not confer blanket
3 protections on all disclosures or responses to discovery and that the protection it
4 affords from public disclosure and use extends only to the limited information or
5 items that are entitled to confidential treatment under the applicable legal
6 principles.

7 WHEREAS it is the intent of the Parties to establish procedures that will
8 expedite the discovery process – limiting the necessity for objections, subsequent
9 motions seeking to compel and/or limit discovery – and facilitate a mechanism
10 for the disposition by the Court of any disputes that may arise in connection with
11 discovery relating to confidential information; and

12 WHEREAS it is the intent of the Parties to ensure that the disclosure of any
13 confidential information within this Action be used solely for purposes of this
14 Action;

15 **IT IS HEREBY STIPULATED AND AGREED**, by and between the
16 Parties, subject to the approval of the Court, as follows:

17 **A. Designation of Confidential Materials and Persons to Whom
18 Confidential Discovery Materials May Be Disclosed:**

19 1. During the course of this Action, any party may seek to have
20 materials produced in discovery, including but not limited to responses to
21 interrogatories and documents produced pursuant to requests for production of
22 documents (“Discovery Materials”), classified as “Confidential.” Any party
23 (“Designating Party”) may designate as “Confidential” any Discovery Materials if
24 he/she/it in good faith believes that the Discovery Material contains confidential,
25 proprietary or private information under California or other applicable law.
26 Discovery Materials so designated are referred to herein as “Confidential
27 Material” or “Confidential Materials.”

28 2. Each page that contains protected material will be stamped or labeled

1 "Confidential Material" or "Confidential" by the producing party. Such stamp or
2 label shall be made on or affixed so as not to obscure or deface the material or
3 any portion of its contents. If only a portion or portions of the material on a page
4 qualifies for protection, the Designating Party also must clearly identify the
5 protected portion(s) (e.g., by making appropriate markings in the margins).
6 Should copies or duplicates be subsequently made of such Confidential Material,
7 the "Confidential Material" or "Confidential" stamp or label shall also be made
8 on or affixed to such copies or duplicates. All references to "Confidential
9 Material" in this Stipulated Protective Order shall be deemed to include and apply
10 to such copies, duplicates and/or extracts of all information derived from
11 Confidential Material, and to Confidential Material marked as exhibits at
12 depositions or otherwise used during the Action. Testimony generated from
13 information designated as Confidential Material will be identified as such either
14 by a statement on the record, before the close of the deposition, hearing, or other
15 proceeding, or stamping or labeling as "Confidential Material" or "Confidential"
16 documents or selected pages of documents containing such testimony.

17 3. If any party, through inadvertence, does not designate certain
18 Discovery Materials as Confidential Material, but thereafter determines that such
19 Discovery Material should have been so designated, it shall provide written
20 notice, within 30 days after determining that such Discovery Material should have
21 been so designated, of the designation thereof as Confidential Material. To the
22 extent practicable, such Discovery Materials will be treated as Confidential
23 Material from the date of receipt of such notice. If a party designates certain
24 Discovery Materials as Confidential Material and later determines that such
25 Discovery Material should not have been so designated, it shall promptly provide
26 written notice of the removal of the designation to all other parties, along with a
27 duplicate copy of the Discovery Materials without the "Confidential Material" or
28 "Confidential" marking.

1 4. All Confidential Material and any portion thereof, including copies
2 thereof, information contained therein and any abstracts, extracts, indices,
3 summaries, charts, notes or other information derived therefrom, shall be deemed
4 confidential, shall be used solely for the purposes of preparation, trial, appeals or
5 settlement of this Action, and shall not be disclosed, given, shown, made
6 available, discussed or otherwise communicated in any way to anyone other than:
7 (a) the Court and Court personnel, (b) the Parties' counsel and staff, (c)
8 stenographic reporters, and (d) any other "Qualified Persons" which shall include
9 only the following: (i) any expert or consultant retained by the Parties' counsel in
10 connection with this Action, (ii) outside vendors who perform microfiching,
11 photocopying or similar clerical functions, and (iii) any other person(s) whom the
12 Parties agree in writing. "Confidential Material" may not be disclosed to any
13 other person or entity without the prior written consent of the Designating Party
14 or further order of the Court. Any disclosure should be only to the extent
15 reasonably necessary to the proper and lawful prosecution and defense of the
16 Parties' claims in this Action, and for no other purpose.

17 **B. Conditions of Disclosure:**

18 1. Prior to the disclosure of Confidential Material or any information
19 contained therein to a "Qualified Person" defined under Paragraph A(4)(d) above,
20 counsel for the party making the disclosure shall secure from each such person an
21 Acknowledgment and Agreement to be Bound ("Acknowledgment"), in the form
22 attached hereto as Exhibit "A," that he or she has read this Stipulated Protective
23 Order, he or she may not, and undertakes not to, divulge any Confidential
24 Material or any information contained therein except in the preparation, trial or
25 appeal of this Action and in accordance with the terms and conditions of this
26 Stipulated Protective Order, and that he or she will not use the Confidential
27 Material for any other purpose. Excluded from the requirement of signing
28 Exhibit "A" are (a) the Court and Court personnel; (b) counsel and staff for

1 parties in this action who have signed the Stipulated Protective Order; (c) and, all
2 current officers, directors, employees and agents of the Designating Party.

3 2. Confidential Material shall be copied only by the Parties' counsel
4 (and their staff) in this Action (or by clerical personnel or Outside Vendors
5 assisting such counsel) and only for purposes permitted by this Stipulated
6 Protective Order, and control and distribution of Confidential Material and copies
7 thereof shall be the responsibility of such counsel, who shall maintain a list of all
8 persons to whom Confidential Material has been disclosed as well as the written
9 assurances executed by such persons as provided in Paragraph B(1). For good
10 cause shown in connection with any question of improper disclosure, a
11 Designating Party may request the Court to order a party to disclose in camera a
12 list of all persons to whom "Confidential Material" has been disclosed as well as
13 the written assurances executed by such persons. Excluded from this requirement
14 are the Court and Court personnel, and counsel and staff for the Parties.

15 **C. Protecting Confidential Materials at Depositions:**

16 1. If either party determines that Confidential Material may be
17 disclosed during the course of any deposition, such counsel shall be entitled to
18 request that any persons present at the deposition, including the court reporter,
19 sign an Acknowledgment in the form attached hereto as Exhibit "A" or be served
20 with a copy of the Court's Order regarding Confidentiality of Designated
21 Materials.

22 2. If any Confidential Material is marked as an exhibit in a deposition,
23 or during a hearing herein, and/or its contents are disclosed, wholly or partially, in
24 the course of the testimony at such deposition, or hearing, counsel for the parties
25 shall advise the reporter taking and transcribing the testimony at such deposition
26 or hearing of the portions of such testimony that refer to Confidential Material,
27 and the exhibit itself, as well as the portions of the transcript containing such
28 disclosure, shall be marked "Confidential Material" or "Confidential" and shall be

1 deemed Confidential Material. To this end, the reporter shall not furnish copies
2 thereof to anyone other than counsel of record for the Parties, and, if so requested
3 by such counsel, the witness and/or the witness' counsel.

4 **D. Use of Confidential Information in Court Filings:**

5 Without written permission from the Designating Party or a court order
6 secured after appropriate notice to all interested persons, a party may not file any
7 Confidential Material in the public record in this Action. To the extent a party
8 chooses to file material under seal that was previously designated by any party as
9 Confidential Material, the filing party must comply with Civil Local Rule 79-5.
10 Any document designated as Confidential Material is deemed appropriate for
11 filing under seal only if the party intending to file it as such submits an
12 application complying with Civil Local Rule 79-5 that is subsequently granted by
13 the Court. The Parties agree to endeavor to minimize the number of documents
14 filed with the Court that contain confidential information and to meet and confer
15 in good faith regarding the manner in which they can do so (such as by
16 redaction).

17 **E. Challenging a Confidential Designation:**

18 Pursuant to Paragraph A(1), a "Designating Party" may only designate
19 materials which it is "good faith" believes are entitled to protection from
20 disclosure under the law. If at any time during this litigation a party ("Objecting
21 Party") disputes a designation of discovery material as "Confidential," the
22 Objecting Party will notify the Designating Party in writing by facsimile or email
23 that he/she/it disagrees with the designation. The notice will identify the material
24 in dispute and explain the basis for the objection. The Designating Party will
25 have 10 calendar days to provide a written response via facsimile or email to the
26 objection, explaining his/her/its reason for designating the material at issue as
27 Confidential Material. Should the Designating Party provide a timely response
28 and the Objecting Party dispute the reasons provided, the Objecting Party may

1 utilize the discovery dispute resolution procedures outlined in Civil Local Rule
2 37.

3 Throughout the dispute resolution procedure in this paragraph, the
4 Designating Party will have the burden of demonstrating that the material at issue
5 is properly designated as confidential under California law. In the event of a
6 dispute over the confidentiality of particular material, the Parties will continue to
7 treat the disputed discovery material as confidential until the dispute is resolved.

8 **F. Non-Party Subpoenas:**

9 If any party is served with a subpoena issued in other litigation that
10 compels production or disclosure of any Confidential Material, that party (the
11 "Subpoenaed Party") shall give written notice, as soon as practicable and in no
12 event not more than five business days after receiving the subpoena to counsel for
13 the Designating Party, which notice shall enclose a copy of the subpoena. The
14 Subpoenaed Party shall not produce or disclose any of the designated documents
15 or information for a period of ten business days, if possible without violating the
16 subpoena, after providing such notice to the Designating Party, and in no event
17 shall such production or disclosure be made before such notice is given. If,
18 within ten business days of receiving such notice, the Designating Party objects to
19 such production or disclosure through the process of a court filing, the
20 Subpoenaed Party shall not make such production or disclosure except pursuant
21 to a court order requiring compliance. Nothing in this Order shall be construed as
22 authorizing a party to disobey a lawful directive from another court.

23 **G. No Restrictions:**

24 Nothing in this Stipulated Protective Order shall (1) restrict any of the
25 Parties' rights with respect to his/her/its own documents or information, (2)
26 restrict any of the Parties' rights with regard to Discovery Materials that have not
27 been designated as Confidential Materials, (3) prejudice any of the Parties' rights
28 to object to the production or disclosure of documents or other information that it

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1 considers not subject to discovery, or (4) prejudice any of the Parties' rights to
2 seek by moving the Court, greater or lesser protection than that provided herein,
3 or modification of the terms of this Stipulated Protective Order.

4 **H. Duration of Order and Return of Confidential Materials:**

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this action,
9 with or without prejudice; and (2) final judgment herein after the completion and
10 exhausting of all appeals, rehearings, remands, trials, or reviews of this Action,
11 including the time limits for filing any motions or applications for extension of
12 time pursuant to applicable law.

13 Within 60 days after the final disposition of this Action and notice from
14 the Designating Party, all materials designated as Confidential Material shall be
15 returned to the Designating Party or destroyed under supervision of counsel. This
16 provision shall not apply to court filings or file copies of pleadings, deposition
17 transcripts and exhibits thereto, briefs or correspondence maintained by the
18 Parties' respective counsel in the ordinary course of business.

19 **I. Binding Effect:**

20 This Stipulation shall remain in full force and effect at all times during
21 which any party to this Stipulated Protective Order or any person having executed
22 the acknowledgment described in Paragraph B(1) above retains in his, her, or its
23 possession, custody or control of any Confidential Material.

24 **J. Additional Parties to Lawsuit:**

25 In the event that other parties are added to this Action, no Confidential
26 Material previously exchanged, produced or used herein shall be disclosed to
27 such additional parties' counsel except upon their agreement to be bound by the
28 provisions of this Stipulated Protective Order.

K. Additional Rights:

2 This Stipulated Protective Order is without prejudice to the right of any
3 party to move the Court for an order for good cause shown for protection of
4 Confidential Material sought by or produced through discovery, which protection
5 is different from or in addition to that provided for in this Stipulated Protective
6 Order, and such right is expressly reserved to the parties. Similarly, each party
7 expressly reserves the right at any time to request the Court to authorize
8 disclosure other than contemplated hereunder of materials subject to this
9 Stipulated Protective Order.

L. Counterparts:

11 This Stipulation may be signed in counterparts which together shall
12 constitute one complete document, and by facsimile signatures, which shall be
13 deemed to be originals.

14 IT IS SO STIPULATED.

16 | Date: March 17, 2014

FISHER & PHILLIPS LLP

By:

GRACE Y. HOROUPIAN
COLLIN D. COOK
Attorneys for Defendants,
Kiewit Infrastructure West Co. and
Mass Electric Construction Co.

Date: March 17, 2014

MAGNANIMO & DEAN LLP

By:

REBECCA L. GOMBOS
Attorneys for Plaintiff,
Mike Marquez

EXHIBIT "A"

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, do solemnly swear that I have read in its
4 entirety and understand the terms of this Stipulated Protective Order regarding
5 production and disclosure of private and/or confidential information that was
6 issued by the United States District Court for the Central District in the action
7 entitled *Mike Marquez v. Kiewit Infrastructure West Co. et al.* Case No. CIV14-
8 00287 ABC (JEMx). I hereby agree to comply with and be bound by the terms
9 and conditions of this Order. I understand that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order unless and until modified by
14 further order of this Court. I hereby consent to the jurisdiction of said Court for
purposes of enforcing this Order.

16 | Dated:

Signature

Print Name